

FEB 06 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 12-90084

ORDER

KOZINSKI, Chief Judge:

A pro se litigant alleges that a district judge should have recused himself from complainant's civil case due to a conflict of interest. But an allegation that a judge erred in failing to recuse is generally merits related and must be dismissed.

See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. 2009); Judicial-Conduct Rule 11(c)(1)(B).

An allegation that a judge failed to recuse for an improper purpose may present a viable claim of judicial misconduct. See In re Complaint of Judicial Misconduct, 605 F.3d 1060, 1062 (9th Cir. 2010). But complainant has provided no proof that the judge was aware of any conflict or was acting from an improper motive. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D). And the judge did ultimately recuse himself to “avoid any appearance of a lack of objectivity.” Thus, this charge is dismissed.

Complainant also requests that criminal charges be filed and a restraining

order be issued against the judge. But misconduct complaint procedures can't provide these forms of relief. See 28 U.S.C. § 354(a)(2); Judicial-Conduct Rule 11(a); cf. In re Complaint of Judicial Misconduct, 570 F.3d 1144, 1155 (9th Cir. 2009).

DISMISSED.